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12 Attorneys for Defendants Commonwealth of the Northern Mariana Islands,
13 Nicole C. Forelli, William C. Bush, D. Douglas Cotton, L. David Sosebee,
14 Andrew Clayton, and Pamela S. Brown (“CNMI Defendants”)

15 UNITED STATES DISTRICT COURT

16 FOR THE NORTHERN MARIANA ISLANDS

17 ROBERT D. BRADSHAW,

18 Plaintiff,

19 vs.

20 COMMONWEALTH OF THE
21 NORTHERN MARIANA ISLANDS,
22 NICOLE C. FORELLI, WILLIAM C.
23 BUSH, D. DOUGLAS COTTON,
24 L. DAVID SOSEBEE, ANDREW
25 CLAYTON, UNKNOWN AND
UNNAMED PERSONS IN THE CNMI
OFFICE OF THE ATTORNEY
GENERAL, ALEXANDRO C. CASTRO,
JOHN A. MANGLONA, TIMOTHY H.
BELLAS, PAMELA S. BROWN,
ROBERT A. BISOM, AND JAY H.
SORENSEN,

Defendants.

CIVIL ACTION NO. 05-0027

**OPPOSITION TO PLAINTIFF'S
“MOTION FOR DEFENDANT
L. DAVID SOSEBEE TO SHOW
CAUSE ON WHY HE SHOULD
NOT BE ASSIGNED COSTS OF
SERVICE”; CERTIFICATE OF
SERVICE**

Hearing: Thur., 12 October 2006
Time: 9:00 a.m.
Judge: Hon. Alex R. Munson

1 Defendant L. David Sosebee respectfully opposes as follows plaintiff's "Motion
2 . . . To Show Cause On Why [sic] He Should Not Be Assigned Costs of Service." The
3 opposition is two-fold.

4 First, as may be seen from the attached "Declaration of David Sosebee in
5 Opposition to Plaintiff's Motion . . .," defendant Sosebee has never received a request
6 to waive service, having previously moved from the address plaintiff states he mailed
7 the request to. Despite leaving a forwarding address with the Post Office, defendant
8 Sosebee has never received any request for waiver of service from the plaintiff.

9 Plaintiff's motion, affidavit and attached exhibits offer no proof that defendant
10 Sosebee ever received a request to waive service. While plaintiff's affidavit states that
11 Exhibit B to his affidavit is "postal confirmation [which] shows [plaintiff's] letter to
12 Mr. Sosebee [requesting waiver of service that] was delivered by the Post Office on
13 June 27, 2006," this is not proof that Mr. Sosebee actually received any such request.
14 Exhibit B purports to show that the plaintiff paid for postal service, and that it was sent
15 on 21 June 2006 from Calder, Idaho to an address not in use by defendant Sosebee at the
16 time. See attached "Declaration of David Sosebee." But contrary to Mr. Sosebee's
17 affidavit, Exhibit B does not show that it was received anywhere by anyone.

18 Second, the motion for assessment of costs for service of process is premature.
19 Rule 54(d)(1), Federal Rule of Civil Procedure Rule 54(d)(1) provides:

20 Except when express provision therefor is made either in a statute of
21 the United States or in these rules, costs other than attorneys' fees shall be
22 allowed as of course to the prevailing party unless the court otherwise
23 directs; but costs against the United States, its officers, and agencies shall be
24 imposed only to the extent permitted by law. Such costs may be taxed by
25 the clerk on one day's notice. On motion served within 5 days thereafter,
the action of the clerk may be reviewed by the court.

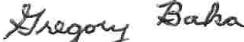
26 Fed. R. Civ. P. (d)(1). The rule is clear enough that costs are generally awarded only to
27 the *prevailing* party in the action, which means at the conclusion of the case, unless

1 the court otherwise directs. Given the fact that there is no proof that the plaintiff actually
2 delivered a request to waive service to defendant Sosebee, which was actually received,
3 there is no basis upon which to tax costs prior to final judgment and a determination of
4 who is the prevailing party in this case.

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6 Respectfully submitted,

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10 OFFICE OF THE ATTORNEY GENERAL
11 MATTHEW T. GREGORY # F0205
12 Attorney General

13 Dated: Friday, 29 September 2006.

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GREGORY BAKA # F0199
Deputy Attorney General

Attorneys for Defendants Commonwealth of
the Northern Mariana Islands, Nicole C.
Forelli, William C. Bush, D. Douglas Cotton,
L. David Sosebee, Andrew Clayton, and
Pamela S. Brown ("CNMI Defendants")

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(d), the undersigned declarant states as follows:

1. I am eighteen years of age or older, and I certify that I caused to be served the following documents to the last known address(es) listed below on the date(s) indicated.

OPPOSITION TO PLAINTIFF'S "MOTION FOR DEFENDANT L. DAVID SOSEBEE TO SHOW CAUSE ON WHY HE SHOULD NOT BE ASSIGNED COSTS OF SERVICE"; CERTIFICATE OF SERVICE

2. As set forth below, this service was accomplished either by personal delivery; U.S. Mail; deposit with the Clerk of Court (in attorney's box), cf. Fed. R. Civ. P. 5(b)(2)(D); or electronic service, see Local Rule 5.1.

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Fax: N/A

Via U.S. Mail

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3. I declare under penalty of perjury that the foregoing is true and correct. Executed
on Friday, 29 September 2006.

Gregory Baka
Deputy Attorney General
Attorney for CNMI Defendants